diminish if not eradicate the extant consumer benefits of today's competitive long distance markets.

A. The Effects On the Local Market Alone Dictate the Conclusion that Relief Would Be Contrary to the Public Interest.

As the Commission has recognized, the prospect of interLATA entry is the incentive given by Congress to a BOC to induce its cooperation in opening its local monopoly.[121] Absent this inducement, no BOC would rationally relinquish its bottleneck and voluntarily aid in bringing about competition.[122] BellSouth can do much more to lower entry barriers to its local markets; the public interest requires denial of the application until BellSouth fulfills its obligations.

1. The Commission has Expansive Powers Under the "Public Interest" Section of 271.

BellSouth reiterates the arguments it pressed in its reconsideration petition of the Michigan Order to narrow the reach of the Commission's public interest evaluation under section 271.[123] According to BellSouth, the Commission lacks the

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121 See Michigan Order at ¶ 23.

122 See Shapiro Declaration at 3. As the FCC has found:

> incumbent LECs have no economic incentive, independent of the incentives set forth in sections 271 and 274 of the 1996 Act, to provide potential competitors with opportunities to interconnect with and make use of the incumbent LEC's network and services.

Local Competition Order ¶ 55.

123 See Petition of BellSouth Corporation for Reconsideration and Clarification, In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications

authority to evaluate the level of entry barriers in the local telephone markets in South Carolina.

Under BellSouth's view, the Commission's task under Section 271 is confined to a narrow, mechanical one -- without the exercise of administrative discretion or substantive expertise. The Commission must reject this caricature as it sacrifices the entire wisdom and value of administrative agency delegations by Congress. The "public interest" standard is used by Congress to provide an agency with the flexibility necessary to implement major goals and policy objectives within the agency's domain; it should be exercised accordingly.[124]

Act of 1996 to Provide In-Region, InterLATA Services in Michigan, CC Docket 97-137 (Sept. 18, 1997).

124 The "public interest" is a hallmark of many regulatory statutes. See, e.g., Federal Power Act, 16 U.S.C. Section 24c (Federal Power Commission may authorize the issuance of a security by a public utility only "if it finds that such issue . . . is for some lawful object . . . and compatible with the public interest); Motor Carriers Act, Sections 10761(b), 10762(f) (allowing ICC to "grant relief" from filing requirements "when relief is consistent with the public interest and the transportation policy); Immigration and Nationality Act, 8 U.S.C. Section 1182(d)(5)(A) (permitting Attorney General "for reasons deemed strictly in the public interest" to parole into the United States any alien applying for admission); Federal Aviation Act, 49 U.S.C. 1429(a) (allowing FAA to suspend pilot's certification as required by safety in air transportation and the "public interest"); Interstate Commerce Act, 49 U.S.C. Section 11344(c) (permitting railroad mergers if consistent with the public interest). See also The Business Roundtable v. SEC, 905 F.2d 406 (D.C. Cir. 1990)(noting that SEC has the authority in registering an exchange or association of brokers to consider whether its rules "in general . . . protect investors and the public interest)(citing 15 U.S.C. Sections 78f(b)(5), 78o-3(b)(6).

Of course, the scope of the Commission's public interest jurisdiction under section 271 is no more than a matter of hypothetical interest here, where BellSouth has not, even by its own admission, complied with the checklist. Given BellSouth's defiance of its legal obligations, it should surprise no one that there is little local competitive activity in South Carolina at this time. Sprint therefore confines this discussion to a summary rebuttal of BellSouth's unduly narrow views of the public interest.

BellSouth's mischaracterization notwithstanding, the Supreme Court has described the term "public interest, convenience, and necessity" as a "supple instrument" granting broad powers to the FCC.[125] Those powers call for "imaginative interpretation"[126] and dispense "broad" authority to the FCC to act as an "overseer" and "guardian" of the public interest.[127] Courts are thus required

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125 See Federal Communications Commission v. WNCN Listeners Guild, 450 U.S. 582, 593 (1981) (quoting FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 138 (1940)(the public interest serves as "a supple instrument for the exercise of discretion by the expert body which Congress has charged to carry out its legislative policy")). See also National Broadcasting Co. v. United States, 319 U.S. 190 (1943) (holding that "public interest" confers broad powers upon the FCC); Public Utilities Com'n of Cal. v. FERC, 900 F.2d 269 (D.C. Cir. 1990)("public interest" standard grants broad powers to FERC).

126 See FCC v. RCA Communications, Inc., 346 U.S. 86, 90 (1953)("The statutory standard [of the public interest] no doubt leaves wide discretion and calls for imaginative interpretation").

127 See CBS v. Democratic Nat'l Comm., 412 U.S. 94, 117 (1973). See also National Cable Television Ass'n v. United States and FCC, 415 U.S. 336, 341 (1974)("There is no doubt that

to give "substantial judicial deference" to the Commission's "judgment regarding how the public interest is best served."[128]

The reach of the public interest is minimally defined by the policies inherent in the delegation of substantive law granted by Congress to the agency. See NAACP v. FPC, 425 U.S. 662, 669 (1976). The shape and breadth of an agency's public interest authority varies with the aims and goals of the statute in which the public interest provision is lodged. See id. at 669 (the public interest derives its "content and meaning" from "the purposes for which the Act[] [was] adopted").[129] Here, of course, one of the principal policies established in the Telecommunications Act of 1996 is to effectuate the necessary and complex conditions that will allow for local telephone

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the main function of the Commission is to safeguard the public interest"). See NAACP v. FPC, 425 U.S. 662, 669 (1976). Rather, the exact shape and breadth of an agency's public interest authority varies with the aims and goals of the statute in which the public interest provision is lodged. See id. at 669 (the public interest derives its "content and meaning" from "the purposes for which the Act[] [was] adopted"); Public Utilities Com'n of Cal., 900 F.2d 269 at 281 (same). See also Western Union Div. v. United States, 87 F. Supp. 324, 335 (D.D.C. 1949)("The standard of 'public convenience and necessity' is to be so construed as to secure for the public the broad aims of the Communications Act"), aff'd 338 U.S. 864 (1949).

128 See WNCN Listeners Guild, 450 U.S. at 596 (cites omitted).

129 Public Utilities Com'n of Cal., 900 F.2d 269 at 281 (same). See also Western Union Div. v. United States, 87 F. Supp. 324, 335 (D.D.C. 1949)("The standard of 'public convenience and necessity' is to be so construed as to secure for the public the broad aims of the Communications Act"), aff'd 338 U.S. 864 (1949).

competition. One of the key provisions to implement this policy is to provide the reward of interLATA authority as an inducement to a BOC to cooperate in creating the conditions for a competitive local market in a particular state. To suggest that the Congress foreclosed to the FCC any ability to analyze the opportunities for local competition under section 271 is simply absurd given this context.

The legislative history of the Act demonstrates that Congress was specifically aware that the Commission's public interest review under Section 271 would include consideration of issues relating to local competition. The Senate (whose bill in this respect was adopted) rejected an amendment proposed by Senator McCain which would have eliminated the Commission's authority to conduct a public interest review.[130] Senator McCain's amendment stripped out the public interest by providing that: "Full implementation of the checklist . . . shall be deemed in full satisfaction of the public interest, convenience,

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130 It is well-established that "[w]here Congress includes limiting language in an earlier version of a bill but deletes it prior to enactment, it may be presumed that the limitation was not intended." Rusello v. United States, 464 U.S. 16, 23-24 (1983). The Ninth Circuit has applied this rule specifically to the Communications Act. See Century Southwest Cable Television, Inc. v. CIIF Assocs., 33 F.3d 1068, 1071 (9th Cir. 1994) (rejecting argument that the 1984 Cable Act permitted a cable operator to provide service to apartment buildings against the wishes of the buildings' owners because the enacting Congress had dropped a proposal which would have authorized such actions).

and necessity requirement[s]."[131] The amendment was required, according to Senator McCain and other supporters, because the public interest standard would "negate[] the entire checklist"[132] as it was an "ill-defined, arbitrary standard" which would expand, rather than lessen, the Commission's authority.[133] In short, the amendment's backers believed that, without the amendment, the Senate bill permitted the Commission to use its public interest mandate to consider, when appropriate, issues relating to local competition that are not listed in the checklist. The amendment was, of course, defeated.

BellSouth's reliance on the provision that prohibits the Commission from extending the checklist[134] is equally

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131 See 141 Cong. Rec. S7960 (daily ed. June 8, 1995). See also 141 Cong. Rec. S7954 (daily ed. June 8, 1995) (statement of Sen. McCain) (The FCC's public interest authority "should be eliminated, or at least amended so that compliance with the competitive checklist is deemed to be in compliance with the public interest test").

132 141 Cong. Rec. S7969 (daily ed. June 8, 1995) (statement of Sen. McCain). Senator Craig made similar statements. See, id. at S7964-65 (statement of Sen. Craig) (The public interest standard would permit the Commission to "block" BOCs from offering interLATA services even if the BOC satisfied the competitive checklist).

133 See 141 Cong. Rec. S7960 (daily ed. June 8, 1995) (statement of Sen. McCain). See also id. S7966 (daily ed. June 8, 1995) (statement of Sen. Burns, R-MT.) (Public interest is in "the eye of the beholder."); id. at S7967 (statement of Sen. Thomas, R-WY.) ("The public interest is a vague and subjective standard."); id. at S7970 (statement of Sen. Packwood, R-OR.) (Public interest is "amorphous"); id. at S7965 (statement of Sen. Craig) (The public interest is "subjective" and "a standard that has no standard").

134 See BellSouth Petition at 11; U S West Petition at 17-18.

unconvincing. That provision would prevent the Commission from adding a new interconnection requirement, for example, the obligation to interconnect with information service providers, as a precondition for approval of all Section 271 applications. The prohibition against extending the checklist does not, however, prohibit the Commission from *considering*, as part of the public interest inquiry, other factors that *may* be relevant to whether the local market in a particular state is open to competition. A case-by-case consideration of the relevance of certain aspects of local competition is not the same thing as imposing a checklist condition on approval of all applications.

2. Section 271 Relief Is Not Justified As An Inducement To IXCs To Enter The Local Markets.

Perhaps the oddest argument made by BellSouth is that, regardless of how meritless, its application should be granted as a device to make long distance carriers more desperate to enter the local telephone markets. This is sophistry. First, if entry barriers have not been lowered to the local phone markets, it doesn't matter how strong the incentive to enter might be -- by definition it cannot be actualized any faster because the barriers still stand. Indeed, as Professor Carl Shapiro explains in the attached affidavit, the level of competitive entry in GTE's and SNET's regions offers no support for BellSouth's argument. Second, the long distance carriers need no additional incentive. Sprint is fully aware of the need to move as quickly as possible to compete on a full line basis in the new world of one-stop shopping. It has been expending extraordinary energies and resources to position itself in the competitive environment envisioned by the 1996 Act. It has by no means artificially slowed local entry as a ruse to slow 271 relief; Sprint is fully aware that the day will come when 271 applications can be granted. What has slowed Sprint's efforts -- in contrast to the claims of BellSouth -- are the various undertakings of the ILECs to resist through wide ranging (if unimaginative) means the erosion of the local telephone monopoly. The barriers erected by these undertakings have forced Sprint to adjust its local competitive plans.

Moreover, even if BellSouth's imaginary allegations of IXC stonewalling were somehow accurate, there are a significant number of non-IXC affiliated CLECs that are fighting daily to break down the local bottleneck. Companies such as ACSI, ITC DeltaCom and Time Warner are engaged in business in South Carolina. That no CLEC in South Carolina is apparently offering a commercially viable alternative to the BOC's local service demonstrates that the problem lies unambiguously with BellSouth, and not with the IXCs.[135]

The Commission can do much to get things back on track by sending a clear, unequivocal signal that interLATA relief can be achieved *only* when such anticompetitive activity is replaced by

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135 The presence of non-affiliated CLECs also demonstrates that any such IXC "plan" would be irrational, as it could never succeed.

true cooperative activity to eliminate entry barriers, as Congress intended. Arguing that Section 271 relief should be granted because of the *absence* of local competition instead of *presence* of local competition turns the statutory scheme on its head.

Indeed, BellSouth's true hostility to the prospects of local competition is in full evidence in its participation in a national advertising campaign funded through the United States Telephone Association. This campaign, promoting the incumbent local telephone company and designed to engender consumer mistrust of competitive entrants, reflects a clear belief by its sponsors, BellSouth among them, that competitive entry is not among the BOCs' (and thus BellSouth's) economic repertoire. Sprint has accordingly petitioned the Commission to investigate this conduct and consider it in its various statutory tasks, most especially 271 proceedings.[136] The underlying attitudes of the USTA members are highly relevant to the task of ascertaining the degree of BOC cooperation to facilitate entry.

As discussed above, Sprint believes summary dismissal is appropriate here. Sprint nevertheless responds to some of the factually and analytically flawed rhetoric contained in the public interest section of the application. The prospect of BellSouth's entry into long distance will not predictably improve the competitive performance of this market. As discussed below,

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136 Petition of Sprint Corporation for Investigation and Relief (Sept. 10, 1997).

the likelihood of harm significantly and unambiguously outweighs the purported benefits.

B. The Effects on the InterLATA Market Also Require Denial of the Application.

1. BellSouth's Claims of Benefits to InterLATA Markets Are Entitled To No Weight.

BellSouth argues that its entry into the long distance market would be beneficial to consumers because, it asserts, the interLATA market is not performing competitively. Like other BOCs, BellSouth relies upon a number of studies and affidavits produced for this proceeding and comparable ones for this most counterintuitive proposition.

All of the papers upon which BellSouth relies rest fundamentally upon false factual assumptions. As the attached analysis, An Analysis Of BellSouth's Projections of Competitive Benefits And Consumer Welfare by Marybeth Banks demonstrates, BellSouth's papers use the wrong numbers and thus produce the wrong conclusions. First, BellSouth's proposed rates for interLATA service are in fact *higher* than those currently charged by Sprint.[137] It is thus difficult to see how BellSouth's interLATA entry would result in any consumer benefits at all. Second, BellSouth's attempt to show the benefits that will result from its interLATA entry by comparing SNET's in-region long

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137 See Marybeth M. Banks, Director, Federal Regulatory Affairs Sprint Communications Company L.P., An Analysis Of BellSouth's Projections of Competitive Benefits And Consumer Welfare (1997) (Attachment C).

distance rates with certain AT&T rates is unpersuasive. An examination of Sprint's long distance rates shows that there is little difference between SNET's prices and those of the industry generally.[138] Without any basis in actual market prices, the extravagant efficiencies promised by BellSouth and its experts collapse easily.

BellSouth also points to the consumer desire for one-stop shopping as one significant attraction to its interLATA entry. Sprint does not doubt the value of one-stop shopping; it has itself stressed this point in its advocacy to this Commission. But it is precisely the high value placed on this which counsels *against* BOC entry until the local market opportunities have been made available. As explained by Professor Shapiro, marketing economies here may be significant, and thus public policy dictates that opportunities to capture them be available on reasonably comparable terms to all possible participants. But so long as the local market is kept closed by BOC behavior, there is no opportunity for any carriers other than the BOC to offer one-stop shopping. And, significantly, entry into long distance, already well established, is readily and quickly achieved by reselling existing capacity. Thus, interLATA competition is much less of a concern and much less of an opportunity than non-existent local entry at this time. It is thus preferable to allow for local market entry opportunities first, which can

[138] Id. at pp.4-8.

thereafter be quickly followed by additional entry into long distance markets.

2. Predictable Harm To The InterLATA Market Is Alone Sufficient Reason To Deny The Application.

Without adequate competition established at the local exchange level, there will be no market disciplining effect on BellSouth to refrain from anticompetitive conduct in the interLATA market. Both discrimination and cross-subsidization remain serious threats to the interLATA competitive market.

a. Discrimination.

As described by the former FCC Chief Economist Joseph Farrell:

> The BOCs' incentives and ability to discriminate against rivals in long-distance -- to take the most prominent example of *MFJ* prohibitions -- depend on their market power in the local bottleneck. If we can open up the bottleneck and implement vigorous competition there, then BOCs will have little or no incentive to raise the costs of their long-distance partners -- and if they do so, those long-distance carriers and their customers will have other choices, so the harm to consumers will be limited. Thus, when there is enough competition in what is now the local bottleneck, it will make good sense to let the BOCs into complementary businesses such as manufacturing and long distance.[139]

While regulators will try to prevent this type of misconduct, the anticompetitive opportunities available to BellSouth will be substantial. It need only adversely adjust any one of large

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[139] Farrell, Joseph, Creating Local Competition, 49 Fed. Comm. L.J. 201, 207-08 (Nov. 1996).

numbers of access "details" and thereby seriously disrupt the interLATA market.

BellSouth could also mask its behavior in ways that will be difficult to remedy.[140] Further, the opportunities for discrimination remain substantial as BellSouth insists on OSS interfaces that require human intervention (and thus discretion) rather than electronic interfaces. As explained above, Sprint's experience in Florida confirms that BellSouth's OSS is simply incapable of supporting local competition. Finally, trying to "undo" the harm flowing from discriminatory conduct will likely be far costlier and more complex than simply avoiding them in the first place.

One of the more misleading arguments set forth by BellSouth has been to try to identify the experience of BOC competition in the New York-New Jersey corridor to show that discrimination is unlikely. The example in fact suggests the opposite proposition. BellSouth notes that Bell Atlantic was able to achieve a "mere" 20% market share in the toll corridor traffic, thereby suggesting the presence of benign competition and nothing else.[141] What is omitted from this neat example is the fact that this market share

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140 The FCC's former Chief Economist has stated that "[t]hese problems are hard to regulate away, because the withdrawal of cooperation from rivals may be subtle, shifting, and temporary, but yet have real and permanent effects. . . ". See Farrell, Joseph, Creating Local Competition, 49 Fed. Comm. L.J. 201, 207 (Nov. 1996).

141 See Br. at 78.

was achieved *notwithstanding the fact that none of this traffic was presubscribed to Bell Atlantic,* it is comprised of dial-around minutes.[142] That such a large fraction of the traffic could be obtained through such a crude dialing mechanism in fact suggests such a powerfully successful degree of marketing as to raise suspicion.

b. Cross-subsidization.

Contrary to BellSouth's contention,[143] regulation has not removed the BOC's incentive and ability to engage in anticompetitive conduct similar to that found under rate-of-return regulation. This is because price cap regulation still considers underlying ILEC costs. The FCC's price cap scheme imposes reporting requirements for, and periodic agency reviews of, BellSouth's profit levels, i.e., rates of return. Thus, the reporting requirements and periodic reviews continue cost-based regulation. As such, they induce BellSouth to misallocate costs from competitive services to the noncompetitive side.[144]

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142 See United States v. Western Elec. Co., 569 F. Supp. 1057, 1110 n.230 (D.D.C. 1983).

143 See Br. at 85-96.

144 See Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services; Implementation of Section 601(d) of the Telecommunications Act of 1996, WT Docket No. 96-162, *Report and Order* at ¶ 60 (released Oct. 3, 1997) (the recent revision of the FCC's price cap rules 'substantially reduces, but does not eliminate entirely the BOC's incentive to misallocate costs, since the price caps regime still retains a rate-of-return aspect in the low-end adjustment mechanism. Furthermore, periodic performance reviews to update the X-factor could

In theory, these unwholesome incentives would not exist under a "pure" price cap regime. Under pure price caps, initial rates would be based on "true economic cost" and would not thereafter be altered in response to reported costs. The Commission has not adopted a pure price cap plan, however, given public policy goals other than the achievement of maximum efficiency.[145] Attention to BellSouth's performance, measured in terms of its rate of return, ensures that over time rate levels do not become unjust or unreasonable, either in the political or legal sense. This "feedback" mechanism retains the unwholesome incentives embedded in traditional rate-of-return regulation.[146]

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replicate the effects of rate-of-return regulation, if based on a particular carrier's interstate earnings rather than industry-wide productivity growth.") (citations omitted).

145 From its inception, the FCC's price cap plan has explicitly recognized that any plan must not ignore the Commission's obligation to ensure just and reasonable rates. Policy and Rules Concerning Rates for Dominant Carriers, *Second Report and Order*, 5 FCC Rcd 6786, 6801 ¶ 121 (1990).

146 The periodic adjustment of productivity factors, and the attending reliance upon an examination of ILEC costs, provides an example of the "feedback mechanism." The Commission has also committed to a performance review in "about two years" so that the Commission can "make any necessary adjustments before the price cap plan leads to unreasonably high or low rates." See In the Matter of Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, *Fourth Report and Order* at ¶ 166 (released May 21, 1997) ("Price Cap Fourth Report and Order"). While the Commission emphasized that it will, to the extent possible, focus on "industry-wide performance or other generic factors, rather than adjustments that are tied to a particular price cap incumbent LEC's interstate earnings . . . ." see id. at ¶ 167, the ultimate determinant of "reasonableness" must remain a firm's costs. Until this legal requirement changes, the FCC's regulatory scheme will remain essentially the same.

The Commission has also refused to limit its discretion to make exogenous rate adjustments to ensure that rates permit recovery of historic costs.[147] Finally, to avoid regulatory confiscation, the Commission has also retained the low-end adjustment mechanism that ensures that no price cap LEC will earn less than a 10.25% interstate rate-of-return.[148]

The improvements brought by price caps as actually implemented do not include elimination of the regulated firm's incentive to shift costs.[149] Until and unless the FCC's statutory mandate is changed, its price cap regulation will promote the same incentive and ability to cross-subsidize as exists under rate-of-return regulation.

Finally, the FCC's structural and accounting safeguards do not eliminate the opportunity to act on the incentives created by rate regulation. The Commission explicitly acknowledged in its Non-Accounting Safeguards Order that its rules leave BOCs with opportunities to misallocate the costs of their Section 272

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147 See Price Cap Fourth Report and Order at ¶ 175 (noting that exogenous adjustments may be necessary to permit LECs to recover "embedded" costs).

148 See id. at ¶ 157.

149 In upholding the FCC's price cap regulations, the D.C. Circuit acknowledged that "price cap regulation cannot quite live up to its promise. . . . Obviously no such formula can be perfect, so ultimately the Commission must check to see whether the cap has gotten out of line with reality. The prospect of that next overview may dampen firms' cost-cutting zeal." See National Rural Telecom Ass'n v. FCC, 988 F.2d 174, 178 (D.C. Cir. 1993).

affiliates.[150] Far from requiring complete separation of BOCs and their Section 272 affiliates, the Commission permitted substantial integration. For example, the Commission permitted sharing of marketing and administrative services and the offices and equipment associated with those activities.[151] The Commission also permitted the operating company and its Section 272 affiliate to obtain services from the same outside suppliers.[152] Undetected cross-subsidy is therefore a recognized risk despite regulatory safeguards.

c. Access Charge Reform Is A Prerequisite to Entry.

Additionally, interLATA entry cannot be authorized until access reform is fully implemented. Competition cannot produce

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150 In establishing the structural safeguards applicable to BOC Section 272 affiliates, the Commission balanced the inefficient incentives with the increased economies of scale and scope created by the integration of BOCs and their affiliates. As the Commission explained,

> [w]e believe it is consistent with both the letter and purposes of section 272 to strike an appropriate balance between allowing the BOCs to achieve efficiencies within their corporate structures and protecting ratepayers against improper cost allocation and competitors against discrimination.

<u>Non-Accounting Safeguards Order</u> at ¶ 167.

151 <u>See</u> <u>id.</u> at ¶ 178. In doing so, the Commission stated that "[w]e recognize that allowing the sharing of in-house services will require a BOC to allocate costs of such services between the operating company and its section 272 affiliate and provide opportunities for improper cost allocation . . . ." <u>Id.</u> at ¶ 180.

152 <u>See</u> <u>id.</u> at ¶ 184.

the hoped for efficiency gains for consumers if regulation continues to distort the market. In its recent Access Charge Order, the Commission did remove some of the inefficiencies in the interstate access rate structure. But while it has acknowledged that current access charge levels greatly exceed costs,[153] the Commission's "market-based" approach to lowering access charges is critically dependent on competition in access that is yet to develop.[154]

The inflated access charges that Sprint and other IXCs must pay over to BellSouth and to other BOCs create indisputable problems if the latter are allowed to compete for interLATA business. BellSouth has a clear, artificial cost advantage in obtaining the access services essential to the provision of interLATA services.

As Professor Shapiro explains, BellSouth will be able to compete for incremental toll calling by imputing the true cost of access; everyone else will be competitively disadvantaged by the need to include the inflated access costs charged by BellSouth. This advantage is by no means rectified by regulatory

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153 See In the Matter of Access Charge Reform, CC Docket No. 96-262, *First Report and Order* at ¶ 29 (released May 16, 1997) ("Access Charge Reform Order") (describing effects of overallocation of intrastate costs to the interstate rate base).

154 See id. at ¶ 263. BellSouth has not produced evidence of any amount of access competition sufficient to restrain its own pricing. In addition, the FCC has not even established specific rules for its market-based approach.

requirements of separate subsidiaries and imputation, since economic judgments will be made for the enterprise as a whole.

In the Access Charge Order, the Commission concluded that price squeezes imposed by vertically integrated LECs on their long distance competitors were unlikely.[155] In reaching this conclusion the Commission assumed that, if a LEC attempted such a price squeeze, an IXC could bypass the LEC network by purchasing UNEs.[156] But this form of bypass is unavailable in South Carolina because of the deficiencies in BellSouth's OSS and the legal uncertainties regarding the status of UNEs in general.[157] Thus, the very condition the FCC has deemed necessary to preclude a price squeeze is absent here.

The opportunities for BellSouth to discriminate and cross-subsidize hurts not only competitors, but consumers who otherwise reap the benefits of the competitive process. Local ratepayers are forced to subsidize the competitive ventures of the BOCs. Second, consumers of competitive interLATA services are saddled with less efficient products and services because the market share of more efficient firms has been displaced by BellSouth -- not by better service but by misconduct.

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155 See Access Charge Order at ¶ 278.

156 See id. at ¶ 280.

157 As explained in note 11, supra, the Eighth Circuit recently overturned the FCC rule that prohibits an ILEC from disassembling UNEs that are already combined in the ILEC's network.

CONCLUSION

For the foregoing reasons, BellSouth's application must be denied.

Respectfully submitted,

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Dated: October 20, 1997

CERTIFICATE OF SERVICE

I, Catherine M. DeAngelis, do hereby certify that on this 20th day of October, 1997, copies of the foregoing "Petition to Deny of Sprint Communications Company L.P." were mailed, first class postage prepaid, unless otherwise indicated, to the following parties:

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A